DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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1245.01-03

NO THIRD PARTY CONTACTS

MAR 15 2000

T:EO:B4

Employer Identification Number:

Dear Sir or Madam:

In a letter dated November 9, 1998, we notified you that we were reconsidering the issue of whether rental payments for the lease of space on your antenna tower and transmission facility constitute unrelated business income under sections 511 through 514 of the Internal Revenue Code. This issue was addressed in a ruling that was part of a letter issued to you on January 20, 1998, and published in deleted form under the provisions of section 6110 as PLR 9816027. After reconsideration, we conclude that our initial ruling is in error. Accordingly, ruling #3 of our January 20, 1998 letter (PLR 9816027) is modified as follows:

The information you submitted indicates that you have constructed and maintain an antenna tower on your property designed to hold broadcast antennae, dishes and other similar types of radio frequency transmission receipt equipment. The tower is permanently affixed to the real estate upon which it is located and cannot be severed. The tower is registered with the FCC.

The tower has capacity to house additional antennae for radio signal transmission beyond that necessary for your own use. On February 12, 1997, you entered into an agreement for the long-term lease of space on your antenna tower and a right of way on the tower premises for the installation, operation and maintenance of the lessee's equipment. The lease specifically includes space on the tower for the installation of the lessee's equipment, as well as space in a separate broadcast station building for the installation, operation and maintenance of the lessee's equipment. The lessee is in the business of offering paging services to customers.

The lease is for five years with the lessee having options to renew the lease for up to four additional terms. The rent is for a monthly fee adjusted for inflation. The lease specifies that the set rental amount may be adjusted if the size, weight and wind loading of the tower-mounted

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appurtenances or the number of those appurtenances increase (or decrease) or if the equipment installed in the broadcast building is increased or decreased. The tower lease agreement contains the usual provisions of a real estate lease including the obligation to utilize the space without interference with other tenants on the tower; to comply with all applicable terms of its licenses in the operation of its equipment installed on the tower; and to indemnify and insure the lessor against any claim arising out of the use of the tower. The rental amount is not allocated separately to tower space or space in the building but covers both sites.

In our January 20, 1998 letter, we ruled that income from the lease of space on your antenna tower was rental income from the lease of real property and not taxable under section 512(b)(3) of the Code because the transmission tower was permanently affixed to the real estate upon which the tower was located. This is incorrect.

The Income Tax Regulations under section 48 [section 1.48-1(c)] define tangible personal property. Tangible personal property does not include land improvements and inherently permanent structures. Specific examples of property which is not tangible personal property include docks, bridges and fences. A broadcasting tower seems to fit within this definition for depreciation purposes. However, section 1.48-1(d) of the regulations specifically states that broadcasting towers are considered "other tangible property."

Section 1.1245-3(c)(1) of the regulations provides that "property described in section 1245(a)(3)(B)" includes "other tangible property" used as an integral part of furnishing communication services. A broadcasting tower is, accordingly, property described in section 1245(a)(3)(B).

Section 512(b)(3)(A) of the Code provides that all rents from real property are excluded from the definition of unrelated business taxable income. Section 512(b)(3)(A) provides further, however, that property described in section 1245(a)(3)(B) is personal property. For purposes of the unrelated business income tax, broadcasting towers are considered personal property.

Accordingly, we rule that receipts attributable solely to the rental of the broadcasting tower are not rent from real property under section 512(b)(3) of the Code. Thus, such amounts constitute unrelated business taxable income under section 512(a)(1) and are subject to tax under section 511. In this regard, ruling #3 of our January 20, 1998 letter (PLR 9816027) is modified. The other rulings contained in this letter are affirmed.

The Commissioner, Tax Exempt and Government Entities Division, has exercised her discretionary authority under section 7805(b) of the Code to grant relief from the retroactive effect of this modification. This modification is effective from the date of this letter.

We are informing the Area Manager - Great Lakes of this ruling. Because the ruling could help resolve future tax questions about your income tax status, you should keep it in your permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Steven T. Miller
Director, Exempt Organizations

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